

The 3rd February, 1995

No. 14/13/87-6Lab./154.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s The Ambala Khadi Ashram, Ambala City *versus* Shri Birbal.

IN THE COURT OF SHRI S. R. BANSAL (ADDITIONAL DISTRICT & SESSIONS JUDGE),
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 67 of 1992

WORKMAN SHRI BIRBAL, C/O BHARTIYA MAZDOOR SANGH, G. T. ROAD,
PANIPAT

and

THE MANAGEMENT OF THE AMBALA KHADI ASHRAM, AMBALA CITY

Present :

WR, Shri Karan Singh.

MR, Shri J. R. Sharma.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called as 'the Act'), the Governor of Haryana referred the following dispute between the workman Shri Birbal and the management of the Ambala Khadi Ashram, Ambala City to this court for adjudication,—vide Haryana Government notification bearing No. 16298—302, dated the 27th March, 1992:—

"Whether the termination of services of Shri Birbal is valid and justified? If not to what relief is he entitled?"

The Workman raised a demand notice dated 7th January, 1992 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate Government made the above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. Workman appeared and stated that his demand notice may be treated as claim statement.

The stand of the workman in the demand notice/claim statement is that he worked in the Glazed Pottery, Pinjore of the management for the period from 1st April, 1987 to 30th April, 1991. His services were terminated on 1st May, 1991 without serving any chargesheet and holding of any enquiry. It is alleged that the Glazed Pottery Pinjore was never closed and the persons recruited after the workman are still working. It is alleged that the workman was drawing salary of Rs. 904/-P. M. and his services were terminated on account of his participation in the trade union activities. Workman has alleged his termination to be illegal and demanded his reinstatement with continuity of service and back wages.

The management filed written statement and pleaded that Khadi Ashram is not 'industry' and therefore the provisions of the Act are not applicable. It was also alleged that due to heavy losses the workman along with others became surplus and accordingly an agreement was arrived at between the workman and others and Secretary, Khadi Ashram, Ambala under which the workman received payment without any protest and therefore his claim is liable to be rejected.

Workman submitted replication controverting the allegations of the management and reiterated those made in the demand notice/claim statement.

On the rival contentions of the parties, the following issues were framed for the decision:—

- (1) Whether the termination of services of Shri Birbal is valid and justified? If not, to what relief is he entitled?
- (2) Whether the respondent establishment is not an 'industry' under Industrial Dispute Act? If so, its effect? OPM

(3) Whether dispute was previously finally settled ? If so, its effect ? OPM

(4) Relief.

Parties led evidence. I have heard the Learned representatives of the parties. My issuewise findings are as under :—

Issues Nos. 1, & 3 :

Both these issues are inter linked and they are taken up together for decision.

Workman appeared as WW-1 and supported all the allegations made by him in the demand notice/claim statement. He stated that no prior notice was given nor retrenchment compensation was paid and after his termination Babu Ram, Dharam Pal, Surjeet and Ram Pal etc. were recruited. He also stated that retired persons namely Som Nath, Gobind Ram and Ramkishan have also been employed. He stated that his signatures were obtained on blank paper. He demanded his reinstatement with continuity of service and back wages.

During cross-examination he admitted his signatures on agreement Ex-M-1 dated 29th March, 1991. He also stated that this agreement was also signed by other workmen. No doubt he stated that he was not made to understand the contents of agreement Ex-M-1 but the fact remains that he did not make any complaint regarding this to any of the senior officer or any other authority. Moreover this runs contrary to his assertions in the examination in chief that his signatures were obtained on blank paper. In any case the plea raised by him after thought and cannot be accepted. In further part of his cross-examination he admitted the receipt of cheque containing notice pay and retrenchment compensation. Although he stated that the same was arrears of enhanced dearness allowance.

The case of the management stand substantiated by MW1 Shri Sushil Kumar, Secretary of the management who stated that Glazed Pottery was running in losses and accordingly agreement Ex-M-1 was entered into between the workman and others and the management. He also stated that under the agreement the workman received his due payment. He then stated that since there was a surplus staff the services of the workman and others were terminated. Now the workman has admitted the receipt of cheque which according to the management was notice pay and retrenchment compensation etc. The workman has not proved that it was arrears of dearness allowance. The management has denied that any junior persons have been retained or recruited. The perusal of Ex-M-1 shows that the management was in losses and there was surplus staff and accordingly under this agreement the workman agreed to receive his entire due regarding notice pay and retrenchment compensation etc. and agreed to be relieved from service. It was held in *E. I. D. PARRY (India) Ltd. versus Labour Court, Guntur and others* 1992—LLR 344 at page 349 that a settlement arrived at between the employer and workman otherwise than in the course of conciliation proceedings is binding only on the party to the agreement as provided in section 18 (1) of the Act. It is thus quite evident that this agreement Ex-M-1 is binding on the workman and therefore the termination of the services of workman cannot be held to be illegal and the workman is not entitled to any relief. The finding on both these issues are therefore, returned in favour of the management and against the workman.

Issue No. 2 :

The onus to prove this issue was on the management. The management has not proved this issue nor it was argued at the time of arguments. The finding on this issue is, therefore, returned in favour of the workman and against the management.

Relief :

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

The 12th December, 1994.

S. R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1978, dated the 30th December, 1994.

Forwarded (four copies) to the Financial Commissioner & Secretary to Govt., Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.